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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

) Case No.

ABANTE ROOTER AND PLUMBING)
INC., individually and on behalf of all) **CLASS ACTION**
others similarly situated,)
Plaintiff,) **COMPLAINT FOR VIOLATIONS**
vs.) **OF:**
CARD GROUP INTERNATIONAL,) 1. NEGLIGENT VIOLATIONS
LLC; and DOES 1 through 10,) OF THE TELEPHONE
inclusive, and each of them,) CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
Defendant.) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
) 3. NEGLIGENT VIOLATIONS
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]
) 4. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]

) **DEMAND FOR JURY TRIAL**
)
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)

1 Plaintiff ABANTE ROOTER AND PLUMBING INC. (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of CARD GROUP INTERNATIONAL,
8 LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff
9 on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
10 Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related regulations, specifically the
11 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
14 a resident of California, seeks relief on behalf of a Class, which will result in at
15 least one class member belonging to a different state than that of Defendant, a
16 California company. Plaintiff also seeks up to \$1,500.00 in damages for each call
17 in violation of the TCPA, which, when aggregated among a proposed class in the
18 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
19 Therefore, both diversity jurisdiction and the damages threshold under the Class
20 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Central
22 District of California pursuant to *28 U.S.C. 1391(b)* and because Defendant does
23 business within the State of California and Plaintiff resides within the County of
24 Alameda.

25 **PARTIES**

26 4. Plaintiff, ABANTE ROOTER AND PLUMBING (“Plaintiff”), is a
27 natural person residing in Emeryville, California and is a “person” as defined by
28 *47 U.S.C. § 153 (39)*.

5. Defendant, CARD GROUP INTERNATIONAL, LLC (“Defendant”) is credit card processing company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning in or around December 2018, Defendant contacted Plaintiff on Plaintiff's cellular telephone number ending in -3803, in an attempt to solicit Plaintiff to purchase Defendant's services.

9. Defendant used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone number (253) 220-2969.

11. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

12. Defendant's calls were placed to telephone number assigned to a

cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

13. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

14. Further, Plaintiff's cellular telephone number ending in -3803 was added to the National Do-Not-Call Registry on or about July 12, 2018.

15. Defendant placed multiple calls soliciting its business to Plaintiff on his cellular telephone ending in -3803 in or around December 2018.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

18. On or about December 14, 2018, Plaintiff requested for Defendant to stop calling Plaintiff during one of the initial calls from Defendant, thus revoking any prior express consent that had existed and terminating any established business relationship that had existed, as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

19. Despite this, Defendant continued to call Plaintiff in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

20. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant after requesting they stop calling, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others

1 similarly situated, as a member the four proposed classes (hereafter, jointly, “The
2 Classes”). The class concerning the ATDS claim for no prior express consent
3 (hereafter “The ATDS Class”) is defined as follows:

4 All persons within the United States who received any
5 solicitation/telemarketing telephone calls from
6 Defendant to said person’s cellular telephone made
7 through the use of any automatic telephone dialing
8 system or an artificial or prerecorded voice and such
9 person had not previously consented to receiving such
calls within the four years prior to the filing of this
10 Complaint

11 22. The class concerning the ATDS claim for revocation of consent, to the
12 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined
13 as follows:

14 All persons within the United States who received any
15 solicitation/telemarketing telephone calls from
16 Defendant to said person’s cellular telephone made
17 through the use of any automatic telephone dialing
18 system or an artificial or prerecorded voice and such
19 person had revoked any prior express consent to receive
such calls prior to the calls within the four years prior to
20 the filing of this Complaint.

21 23. The class concerning the National Do-Not-Call violation (hereafter
22 “The DNC Class”) is defined as follows:

23 All persons within the United States registered on the
24 National Do-Not-Call Registry for at least 30 days, who
25 had not granted Defendant prior express consent nor had
26 a prior established business relationship, who received
27 more than one call made by or on behalf of Defendant
28 that promoted Defendant’s products or services, within
any twelve-month period, within four years prior to the

1 filing of the complaint.
2

3 24. The class concerning the National Do-Not-Call violation following
4 revocation of consent and prior business relationship, to the extent they existed
5 (hereafter “The DNC Revocation Class”) is defined as follows:
6

7 5 All persons within the United States registered on the
8 National Do-Not-Call Registry for at least 30 days, who
9 received more than one call made by or on behalf of
10 Defendant that promoted Defendant’s products or
11 services, after having revoked consent and any prior
12 established business relationship, within any twelve-
13 month period, within four years prior to the filing of the
14 complaint.
15

16 25. Plaintiff represents, and is a member of, The ATDS Class, consisting
17 of all persons within the United States who received any solicitation telephone calls
18 from Defendant to said person’s cellular telephone made through the use of any
19 automatic telephone dialing system or an artificial or prerecorded voice and such
20 person had not previously not provided their cellular telephone number to
21 Defendant within the four years prior to the filing of this Complaint.
22

23 26. Plaintiff represents, and is a member of, The ATDS Revocation Class,
24 consisting of all persons within the United States who received any
25 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
26 telephone made through the use of any automatic telephone dialing system or an
27 artificial or prerecorded voice and such person had revoked any prior express
28 consent to receive such calls prior to the calls within the four years prior to the
filing of this Complaint.

29 27. Plaintiff represents, and is a member of, The DNC Class, consisting
30 of all persons within the United States registered on the National Do-Not-Call
31 Registry for at least 30 days, who had not granted Defendant prior express consent
32 nor had a prior established business relationship, who received more than one call
33

1 made by or on behalf of Defendant that promoted Defendant's products or services,
2 within any twelve-month period, within four years prior to the filing of the
3 complaint.

4 28. Plaintiff represents, and is a member of, The DNC Revocation Class,
5 consisting of all persons within the United States registered on the National Do-
6 Not-Call Registry for at least 30 days, who received more than one call made by or
7 on behalf of Defendant that promoted Defendant's products or services, after
8 having revoked consent and any prior established business relationship, within any
9 twelve-month period, within four years prior to the filing of the complaint.

10 29. Defendant, its employees and agents are excluded from The Classes.
11 Plaintiff does not know the number of members in The Classes, but believes the
12 Classes members number in the thousands, if not more. Thus, this matter should
13 be certified as a Class Action to assist in the expeditious litigation of the matter.

14 30. The Classes are so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Classes
16 members are unknown to Plaintiff at this time and can only be ascertained through
17 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
18 The Classes includes thousands of members. Plaintiff alleges that The Classes
19 members may be ascertained by the records maintained by Defendant.

20 31. Plaintiff and members of The ATDS Class and The ATDS Revocation
21 Class were harmed by the acts of Defendant in at least the following ways:
22 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
23 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
24 members to incur certain charges or reduced telephone time for which Plaintiff and
25 ATDS Class and ATDS Revocation Class members had previously paid by having
26 to retrieve or administer messages left by Defendant during those illegal calls, and
27 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
28 members.

1 32. Common questions of fact and law exist as to all members of The
2 ATDS Class which predominate over any questions affecting only individual
3 members of The ATDS Class. These common legal and factual questions, which
4 do not vary between ATDS Class members, and which may be determined without
5 reference to the individual circumstances of any ATDS Class members, include,
6 but are not limited to, the following:

7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant made any telemarketing/solicitation call
9 (other than a call made for emergency purposes or made with
10 the prior express consent of the called party) to a ATDS Class
11 member using any automatic telephone dialing system or any
12 artificial or prerecorded voice to any telephone number
13 assigned to a cellular telephone service;

14 b. Whether Plaintiff and the ATDS Class members were damaged
15 thereby, and the extent of damages for such violation; and

16 c. Whether Defendant should be enjoined from engaging in such
17 conduct in the future.

18 33. As a person that received numerous telemarketing/solicitation calls
19 from Defendant using an automatic telephone dialing system or an artificial or
20 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
21 claims that are typical of The ATDS Class.

22 34. Common questions of fact and law exist as to all members of The
23 ATDS Revocation Class which predominate over any questions affecting only
24 individual members of The ATDS Revocation Class. These common legal and
25 factual questions, which do not vary between ATDS Revocation Class members,
26 and which may be determined without reference to the individual circumstances of
27 any ATDS Revocation Class members, include, but are not limited to, the
28 following:

- 1 a. Whether, within the four years prior to the filing of this
2 Complaint, Defendant made any telemarketing/solicitation call
3 (other than a call made for emergency purposes or made with
4 the prior express consent of the called party) to an ATDS
5 Revocation Class member, who had revoked any prior express
6 consent to be called using an ATDS, using any automatic
7 telephone dialing system or any artificial or prerecorded voice
8 to any telephone number assigned to a cellular telephone
9 service;
- 10 b. Whether Plaintiff and the ATDS Revocation Class members
11 were damaged thereby, and the extent of damages for such
12 violation; and
- 13 c. Whether Defendant should be enjoined from engaging in such
14 conduct in the future.

15 35. As a person that received numerous telemarketing/solicitation calls
16 from Defendant using an automatic telephone dialing system or an artificial or
17 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
18 is asserting claims that are typical of The ATDS Revocation Class.

19 36. Plaintiff and members of The DNC Class and DNC Revocation Class
20 were harmed by the acts of Defendant in at least the following ways: Defendant
21 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
22 via their telephones for solicitation purposes, thereby invading the privacy of said
23 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
24 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
25 and DNC Revocation Class members were damaged thereby.

26 37. Common questions of fact and law exist as to all members of The
27 DNC Class which predominate over any questions affecting only individual
28 members of The DNC Class. These common legal and factual questions, which do

1 not vary between DNC Class members, and which may be determined without
2 reference to the individual circumstances of any DNC Class members, include, but
3 are not limited to, the following:

- 4 a. Whether, within the four years prior to the filing of this
5 Complaint, Defendant or its agents placed more than one
6 solicitation call to the members of the DNC Class whose
7 telephone numbers were on the National Do-Not-Call Registry
8 and who had not granted prior express consent to Defendant and
9 did not have an established business relationship with
10 Defendant;
- 11 b. Whether Defendant obtained prior express written consent to
12 place solicitation calls to Plaintiff or the DNC Class members'
13 telephones;
- 14 c. Whether Plaintiff and the DNC Class member were damaged
15 thereby, and the extent of damages for such violation; and
- 16 d. Whether Defendant and its agents should be enjoined from
17 engaging in such conduct in the future.

18 38. As a person that received numerous solicitation calls from Defendant
19 within a 12-month period, who had not granted Defendant prior express consent
20 and did not have an established business relationship with Defendant, Plaintiff is
21 asserting claims that are typical of the DNC Class.

22 39. Common questions of fact and law exist as to all members of The
23 DNC Class which predominate over any questions affecting only individual
24 members of The DNC Revocation Class. These common legal and factual
25 questions, which do not vary between DNC Revocation Class members, and which
26 may be determined without reference to the individual circumstances of any DNC
27 Revocation Class members, include, but are not limited to, the following:

- 28 a. Whether, within the four years prior to the filing of this

Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had revoked any prior express consent and any established business relationship with Defendant;

- b. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

40. As a person that received numerous solicitation calls from Defendant within a 12-month period, who, to the extent one existed, had revoked any prior express consent and any established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Revocation Class.

41. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

42. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

43. The prosecution of separate actions by individual Classes members

would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

44. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

45. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

46. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

48. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

49. Plaintiff repeats and incorporates by reference into this cause of action

the allegations set forth above at Paragraphs 1-44.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

51. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

52. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

53. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

54. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

55. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

56. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

57. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

58. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

59. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

60. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

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3 **SECOND CAUSE OF ACTION**

4 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
5 **Act**

6 **47 U.S.C. §227(b)**

7 • As a result of Defendant's willful and/or knowing violations of 47
8 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS
9 Revocation Class members are entitled to and request treble damages,
10 as provided by statute, up to \$1,500, for each and every violation,
11 pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
12 • Any and all other relief that the Court deems just and proper.

13 **THIRD CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227(c)**

16 • As a result of Defendant's negligent violations of 47 U.S.C.
17 §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class
18 members are entitled to and request \$500 in statutory damages, for
19 each and every violation, pursuant to 47 U.S.C. 227(c)(5).
20 • Any and all other relief that the Court deems just and proper.

21 **FOURTH CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
23 **Act**

24 **47 U.S.C. §227(c)**

25 • As a result of Defendant's willful and/or knowing violations of 47
26 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation
27 Class members are entitled to and request treble damages, as provided
28 by statute, up to \$1,500, for each and every violation, pursuant to 47

1 *U.S.C. §227(c)(5).*

2 • Any and all other relief that the Court deems just and proper.

3 61. Pursuant to the Seventh Amendment to the Constitution of the United
4 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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7 Respectfully Submitted this 15th Day of January, 2021.

8 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

9 By: /s/ Todd M. Friedman
10 Todd M. Friedman
11 Law Offices of Todd M. Friedman
12 Attorney for Plaintiff